

edies; full remedies could be recovered for any infringement begun during the three months after publication if registration is made before that period has ended. This exception is needed to take care of newsworthy or suddenly popular works which may be infringed almost as soon as they are published, before the copyright owner has had a reasonable opportunity to register his claim.

AMENDMENTS

1990—Pub. L. 101-650 inserted “an action brought for a violation of the rights of the author under section 106A(a) or” after “other than” in introductory provisions.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 104A of this title.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.	
501.	Infringement of copyright.
502.	Remedies for infringement: Injunctions.
503.	Remedies for infringement: Impounding and disposition of infringing articles.
504.	Remedies for infringement: Damages and profits.
505.	Remedies for infringement: Costs and attorney's fees.
506.	Criminal offenses.
507.	Limitations on actions.
508.	Notification of filing and determination of actions.
509.	Seizure and forfeiture.
510.	Remedies for alteration of programing by cable systems.
511.	Liability of States, instrumentalities of States, and State officials for infringement of copyright.
512. ¹	Determination of reasonable license fees for individual proprietors.
512. ¹	Limitations on liability relating to material online.

AMENDMENTS

1998—Pub. L. 105-304, title II, §202(b), Oct. 28, 1998, 112 Stat. 2886, added item 512 “Limitations on liability relating to material online”.

Pub. L. 105-298, title II, §203(b), Oct. 27, 1998, 112 Stat. 2833, added item 512 “Determination of reasonable license fees for individual proprietors”.

1997—Pub. L. 105-80, §12(a)(12), Nov. 13, 1997, 105 Stat. 1535, substituted “Damages” for “Damage” in item 504.

1990—Pub. L. 101-553, §2(a)(3), Nov. 15, 1990, 104 Stat. 2750, added item 511.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 104A, 115, 912 of this title.

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in viola-

tion of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2584; Pub. L. 100-568, §10(a), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, §202(3), Nov. 16, 1988, 102 Stat. 3957; Pub. L. 101-553, §2(a)(1), Nov. 15, 1990, 104 Stat. 2749; Pub. L. 101-650, title VI, §606(a), Dec. 1, 1990, 104 Stat. 5131.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The bill, unlike the present law, contains a general statement of what constitutes infringement of copy-

¹ So in original. There are two items 512 which do not conform to order of sections.

right. Section 501(a) identifies a copyright infringer as someone who “violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118” of the bill, or who imports copies or phonorecords in violation of section 602. Under the latter section an unauthorized importation of copies or phonorecords acquired abroad is an infringement of the exclusive right of distribution under certain circumstances.

The principle of the divisibility of copyright ownership, established by section 201(d), carries with it the need in infringement actions to safeguard the rights of all copyright owners and to avoid a multiplicity of suits. Subsection (b) of section 501 enables the owner of a particular right to bring an infringement action in that owner's name alone, while at the same time insuring to the extent possible that the other owners whose rights may be affected are notified and given a chance to join the action.

The first sentence of subsection (b) empowers the “legal or beneficial owner of an exclusive right” to bring suit for “any infringement of that particular right committed while he or she is the owner of it.” A “beneficial owner” for this purpose would include, for example, an author who had parted with legal title to the copyright in exchange for percentage royalties based on sales or license fees.

The second and third sentences of section 501(b), which supplement the provisions of the Federal Rules of Civil Procedure [Title 28, Judiciary and Judicial Procedure], give the courts discretion to require the plaintiff to serve notice of the plaintiff's suit on “any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright”; where a person's interest “is likely to be affected by a decision in the case” a court order requiring service of notice is mandatory. As under the Federal rules, the court has discretion to require joinder of “any person having or claiming an interest in the copyright”; but, if any such person wishes to become a party, the court must permit that person's intervention.

In addition to cases involving divisibility of ownership in the same version of a work, section 501(b) is intended to allow a court to permit or compel joinder of the owners of rights in works upon which a derivative work is based.

Section 501 contains two provisions conferring standing to sue under the statute upon broadcast stations in specific situations involving secondary transmissions by cable systems. Under subsection (c), a local television broadcaster licensed to transmit a work can sue a cable system importing the same version of the work into the broadcaster's local service area in violation of section 111(c). Subsection (d) deals with cases arising under section 111(c)(3), the provision dealing with substitution or alteration by a cable system of commercials or other programming; in such cases standing to sue is also conferred on: (1) the primary transmitter whose transmission has been altered by the cable system, and (2) any broadcast stations within whose local service area the secondary transmission occurs. These provisions are linked to section 509, a new provision on remedies for alteration of programming by cable systems, discussed below.

Vicarious Liability for Infringing Performances. The committee has considered and rejected an amendment to this section intended to exempt the proprietors of an establishment, such as a ballroom or night club, from liability for copyright infringement committed by an independent contractor, such as an orchestra leader. A well-established principle of copyright law is that a person who violates any of the exclusive rights of the copyright owner is an infringer, including persons who can be considered related or vicarious infringers. To be held a related or vicarious infringer in the case of performing rights, a defendant must either actively operate or supervise the operation of the place wherein the performances occur, or control the content of the infringing program, and expect commercial gain from the operation and either direct or indirect benefit from the

infringing performance. The committee has decided that no justification exists for changing existing law, and causing a significant erosion of the public performance right.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-650 inserted “or of the author as provided in section 106A(a)” after “118” and substituted “copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).” for “copyright.”

Pub. L. 101-553 inserted sentences at end defining “anyone” and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

1988—Subsec. (b). Pub. L. 100-568 substituted “section 411” for “sections 205(d) and 411”.

Subsec. (e). Pub. L. 100-667 added subsec. (e).

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

Section 3 of Pub. L. 101-553 provided that: “The amendments made by this Act [enacting section 511 of this title and amending this section and sections 910 and 911 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Nov. 15, 1990].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

CAUSES OF ACTION ARISING UNDER PREDECESSOR PROVISIONS

Section 112 of Pub. L. 94-553 provided that: “All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose.”

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL FORMS OF CIVIL PROCEDURE

Form of complaint for injunction and damages, see form 17, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Exclusive jurisdiction of district courts of actions arising under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Importation of copies or phonorecords without authority, see section 602 of this title.

Power of the Congress to regulate copyrights, see Const. Art. I, §8, cl. 8.

Registration as prerequisite to infringement action and to certain remedies for infringement, see sections 411, 412 of this title.

United States as infringer, action in United States Court of Federal Claims, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Venue in copyright actions, see section 1400 of Title 28.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 602 of this title.

§ 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2584.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 502(a) [subsec. (a) of this section] reasserts the discretionary power of courts to grant injunctions and restraining orders, whether "preliminary," "temporary," "interlocutory," "permanent," or "final," to prevent or stop infringements of copyright. This power is made subject to the provisions of section 1498 of title 28 dealing with infringement actions against the United States. The latter reference in section 502(a) makes it clear that the bill would not permit the granting of an injunction against an infringement for which the Federal Government is liable under section 1498.

Under subsection (b), which is the counterpart of provisions in sections 112 and 113 of the present statute [sections 112 and 113 of former title 17], a copyright owner who has obtained an injunction in one State will be able to enforce it against a defendant located anywhere else in the United States.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, generally, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Security—

Upon granting injunction pending appeal, see rule 62.

Upon granting preliminary injunction, see rule 65.

Territorial extent of effective service of process, see rule 4.

FEDERAL FORMS OF CIVIL PROCEDURE

Form of complaint for injunction and damages, see form 17, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Power of court to punish for contempt for disobedience to decrees or orders, see section 401 of Title 18, Crimes and Criminal Procedure.

Works consisting of sounds, image, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 512, 1101 of this title.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2585.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The two subsections of section 503 deal respectively with the courts' power to impound allegedly infringing articles during the time an action is pending, and to order the destruction or other disposition of articles found to be infringing. In both cases the articles affected include "all copies or phonorecords" which are claimed or found "to have been made or used in violation of the copyright owner's exclusive rights," and also "all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced." The alternative phrase "made or used" in both subsections enables a court to deal as it sees fit with articles which, though reproduced and acquired lawfully, have been used for infringing purposes such as rentals, performances, and displays.

Articles may be impounded under subsection (a) "at any time while an action under this title is pending," thus permitting seizures of articles alleged to be infringing as soon as suit has been filed and without waiting for an injunction. The same subsection empowers the court to order impounding "on such terms as it may deem reasonable." The present Supreme Court rules with respect to seizure and impounding were issued even though there is no specific provision authorizing them in the copyright statute, and there appears no need for including a special provision on the point in the bill.

Under section 101(d) of the present statute [section 101(d) of former title 17], articles found to be infringing may be ordered to be delivered up for destruction. Section 503(b) of the bill would make this provision more flexible by giving the court discretion to order "destruction or other reasonable disposition" of the articles found to be infringing. Thus, as part of its final judgment or decree, the court could order the infringing articles sold, delivered to the plaintiff, or disposed of in some other way that would avoid needless waste and best serve the ends of justice.